

REMARKS

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

I. Claim Status and Amendments

Claims 15-32 are pending in this application.

Claims 19-21, 26-28, 30 and 31 were withdrawn as non-elected subject matter.

Claims 15, 22-25, 29, and 32 were examined and stand rejected.

Claims 16-18 were objected to for depending on a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. See item 14 on page 10 of the Official Action. Applicants appreciate the Office's indication of allowable subject matter and the rejoinder of claims 17-18 with the elected invention.

Applicants have amended the claims in manner that is consistent with the indication of allowable subject matter. However, rather than rewriting claims 16-18 in independent form, Applicants have opted to incorporate them into independent claim 15. In particular, amended 15 now recites a Markush listing incorporating the fragments of claims 16-18. Claims 16-18 remain as dependent claims. Claim 32 is amended to remove the "percent identity" language. This amendment does

not alter the status of the allowable subject matter and it should place the remaining examined claims in condition for allowance.

Applicants have amended withdrawn method claims 26 and 30 to recite proper antecedent basis to the subject matter of the allowed and elected product claims. Since the examined product claims are believed to be condition for allowance, Applicants respectfully request the Office to consider rejoining at least method claims 26 and 30 with the elected and allowed invention. Please consider whether any other claims are available for rejoinder.

The title has been revised along the lines suggested by the Office.

No new matter has been added.

II. Objections to the Specification

The specification was objected for containing a non-descriptive title. See item 12 on page 4 of the Official Action.

The present amendment overcomes the concern by amending the title along the lines suggested by the Office. Withdrawal of the objection is solicited.

III. Written Description Rejection

Claims 15, 22-25, 29, and 32 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement for the reasons set forth in item 13 on pages 4-10 of the Official Action.

The rejection is premised on the presence of the open-ended "fragments thereof" language in claim 15 and the "percent identity" language in claim 32. For the sole purpose of expediting prosecution and not to acquiesce to the rejection, Applicants have amended the claims to remove the above-noted language and to specify that the promoter fragments correspond to the allowable subject matter of SEQ ID NOS: 2-4. As acknowledged by the Office, the specification contains written description support for the claimed genetic construct in which the promoter is SEQ ID NO: 1 or a fragment selected from the group consisting of SEQ ID NOS: 2, 3, and 4. Independent claim 15 has been amended to reflect this.

For the above reasons, it is believed that the present amendment overcomes this rejection. Withdrawal of the rejection is requested.

IV. Claim Objections

Claims 16-18 were objected to for depending on a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base

claim and any intervening claims. See item 14 on page 10 of the Official Action.

Applicants have amended the claims in manner to place the claims in condition for allowance for reasons previously stated. Withdrawal of the objection is requested.

V. Conclusion

Again, Applicants have amended the claims in manner that is consistent with the Office's indication of allowable subject matter. Thus, the present application is in condition for allowance and early notice to that effect is hereby requested. If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,
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